

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT NEW MEXICO

3 Civil Action No. 11-CV-676 RB/GBW

4 **VIDEOTAPED DEPOSITION OF JOHN ROBERT MCGRAEL**

5 September 18, 2012

6 CHARLES KRETEK, as personal representative of CHRISTOPHER
7 APARICIO, deceased,

8 Plaintiff,

9 v.

10 BOARD OF LUNA COUNTY COMMISSIONERS, JOHN R. SUTHERLAND, in
11 his individual and official capacity, JANE DOE(S) AND JOHN
12 DOE(S),

13 Defendants.

14 A P P E A R A N C E S

15 For the Plaintiff: DUFF WESTBROOK, ESQ.

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1 handcuffed, correct?

2 A Yes, sir. I think it was during the
3 interim while I was still trying to collect myself.
4 They were securing him.

5 Q Okay. And then he quit struggling at
6 some point, correct?

7 A At some point -- at a point, yes, he did.

8 Q Okay. What did you do when he stopped
9 struggling, if anything?

10 A My next clear recollection was that I
11 went back to check on Mr. Aparicio, and he was
12 breathing. He had a pulse at his radius. It was -- you
13 know, he had a good pulse. It was easy to find, and I
14 want to say I stepped back out, and then -- yeah, and
15 then the next thing I clearly remember is, once again,
16 re-engaging and this time attempting to communicate with
17 Mr. Aparicio, and I didn't get any response. I was -- I
18 carry ammonia inhalants in my right front pocket, and I
19 do remember deploying one, holding it near his face. He
20 did react, opened up his eyes, and at that point, he was
21 able to at least verbally communicate with me.

22 Q Prior to giving him the -- breaking the
23 ammonia capsule under Mr. Aparicio's nose, he was -- his
24 eyes were closed?

25 A I would have to say at this time, yes.

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1 Q Okay. Now, you said in your statement to
2 the state police that the two biggest officers on duty
3 that day were handling Mr. Aparicio, and that would have
4 been Mr. Renteria and Mr. Elford?

5 A Yes, sir. Both quite tall.

6 Q And Mr. Renteria is quite --

7 A He's a big guy.

8 Q -- large otherwise, right?

9 A Yeah. He's big guy.

10 Q And so when you came to -- or, I'm not
11 saying you were unconscious, but when you were -- became
12 cognizant of what was going on again after you got up
13 from the floor, you said that Mr. Renteria was on
14 Mr. Aparicio's left side along with Mr. Chavez?

15 A To my train of thought, that's how I
16 remember it.

17 Q And he was up toward the --
18 Mr. Aparicio's head or upper body?

19 A Yeah. It would seem that way from my
20 memory.

21 Q And how far away was Mr. Aparicio's head
22 from J107, the door to J107?

23 A To tell you the truth, I can't give you a
24 clear answer on that. I could guess, but that . . .

25 Q And why did you ask Officer Renteria to

1 get out of the way so you could have access to

2 Mr. Aparicio's upper body?

3 A If I remember right, it was simply
4 because Matt was kneeling on the floor next to him. And
5 just his -- and he had -- had a hand just right on his
6 back, and it just -- he was just blocking my access. If
7 I remember right, Matt just basically scooted a little
8 to his left, and I could access Mr. Aparicio to begin
9 to, you know, ascertain his status.

10 Q And what was Mr. Elford doing at that
11 time?

12 A At that time, I don't recall.

13 Q Was there anybody between Mr. Aparicio's
14 head and the door to J107?

15 A No.

16 Q And how was Mr. Aparicio's body oriented
17 in that corner? Was it, like, parallel to the wall to
18 the holding cell? Was it askew in any way, or do you
19 recall?

20 A In terms of where John 108 was, I would
21 say that he was at a slight angle.

22 Q With his feet which direction?

23 Towards --

24 A With his seat - feet slightly more
25 towards the wall of the holding cell toward John 101.

1 Q So his feet were more toward the holding
2 cell, and his head was, therefore, away from the holding
3 cell?

4 A Yes, sir. Sort of at an angle that way
5 (indicating).

6 Q And I believe you told the state police
7 that Mr. Aparicio's head was facing toward the -- well,
8 I guess toward the side of the room where the booking
9 cages are?

10 A When I re-approached him to attempt to
11 speak with Mr. Aparicio, yeah. His -- he was looking
12 this way (indicating) into the room.

13 Q Do you remember -- prior to the time you
14 administered the ammonia capsule, do you remember
15 Mr. Aparicio saying anything or making any noises?

16 A No, sir.

17 Q Do you remember him making moaning-type
18 noises?

19 A No, sir.

20 Q What did you think breaking the ammonia
21 capsule under Mr. Aparicio's nose would do for him?

22 A I wanted to elicit a response.

23 Q Now, you stated to the state police that
24 you asked him a series of questions designed to
25 determine if he was responsive or not, correct?

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1 A Yes, sir.

2 Q And your testimony is he verbally
3 answered you?

4 A Yes, sir.

5 Q And he answered you "no" to all of the
6 questions?

7 A Yes, sir.

8 Q What was the tone of his voice at the
9 time he allegedly talked to you?

10 A Clear and monotomatic (sic).

11 Q Who was present at the time that he
12 allegedly made these responses to you?

13 A The one person I can clearly remember
14 being close by would have been Officer Renteria.

15 Q Had Mr. Elford gotten up and left?

16 A I do not recall.

17 Q Did you give any -- did you make any
18 statements to Sergeant Edwards when she came into the
19 room?

20 A I remember making a statement to Sergeant
21 Edwards after witnessing all of this that the -- called
22 Central Dispatch, we're sending -- we're sending him to
23 the hospital.

24 Q Was that after Mr. Aparicio had become
25 unresponsive?

1 understanding?

2 A A tweaker, according to my understanding,
3 is someone that uses methamphetamine.

4 Q Did you ever give any instructions to any
5 of the detention officers who were around Mr. Aparicio's
6 body?

7 A Once again, the only clear instruction I
8 remember giving was as they were preparing for transport
9 to ensure that they took a pair of shackles with them.

10 Q Did you ever tell anybody to get him up
11 off his stomach?

12 A No, sir.

13 Q Did you ever tell anybody to turn him
14 onto his side?

15 A No, sir.

16 Q Why not?

17 A He ahead -- he had a patent airway. He
18 was breathing. He had good color, and he communicated
19 with me. He was obviously respirating. He's fine where
20 he is, and he's under control.

21 Q What do you mean by "under control"?

22 Not --

23 A He's not --

24 Q He's not posing a threat to anyone?

25 A He's not posing a threat to himself, the

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1 A In terms of fighting the other officers,
2 or ...

3 Q Well, unresponsive, meaning he's not
4 responding to what's around him.

5 A I'm just trying to place it in my head.
6 Mr. Aparicio was prone on the ground with the officers
7 around him, and I was in a standing position. I want to
8 say Mr. Aparicio was to my right, and I informed
9 Sergeant Edwards to call Central Dispatch to request an
10 EMS transport to Mimbres Memorial Hospital.

11 Q Did you give that -- did you make that
12 statement to Sergeant Edwards before or after
13 Mr. Aparicio became unresponsive?

14 A I can't clearly recall what
15 Mr. Aparicio's status was at that time.

16 Q Why did you tell Sergeant Edwards to call
17 for an ambulance?

18 A After what I just witnessed, I'm not
19 keeping this individual in the jail.

20 Q Do you recall making a comment after this
21 incident, something about tweakers?

22 A No, sir.

23 Q --Do you know what a tweaker is?

24 A I'm aware of the phrase, yes, sir.

25 Q What's a tweaker, according to your

1 staff, or the rest of the inmate population.

2 Q Now, correct me if I'm wrong, but you've
3 never seen anybody with what some people call excited
4 delirium?

5 A That's correct, sir.

6 Q Okay. And you -- did you know at that
7 time that there's a dispute in the medical community
8 with respect to whether there really is such a thing as
9 excited delirium?

10 A No, sir.

11 Q What were you trained to do in situations
12 where a person is showing signs of having breathing
13 difficulties?

14 A From an EMS point of view, you are going
15 to assist respiration as needed.

16 Q And how do you do that?

17 A I have several options available to me
18 dependent on their status. Nasal oro -- nasal -- what
19 is it? A nasal airway. They also have an oral airway.
20 There's a Combitube, Cobra, bag-valve mask. There's a
21 lot of different things you can do to secure a patent
22 airway and assist in respiration.

23 Q Okay. For us nondoctors or EMTs in the
24 audience, what's a patent airway?

25 A A patent is an unobstructed, open airway